

AMENDED IN SENATE APRIL 1, 1997

AMENDED IN SENATE FEBRUARY 24, 1997

SENATE BILL

No. 94

Introduced by Senator Ayala

December 19, 1996

An act to amend Sections 18895.2, 18897.63, and 18897.87 of, to add Sections 18897.1 and 18897.97 to, and to add Article 1.5 (commencing with Section 18896) to Chapter 2.5 of Division 8 of, the Business and Professions Code, relating to athlete agents.

LEGISLATIVE COUNSEL'S DIGEST

SB 94, as amended, Ayala. Athlete agents: disclosure.

(1) Existing law, the Miller-Ayala Athlete Agents Act, provides for the regulation of the activities of athlete agents, as specified.

This bill would, in addition, do all of the following:

(a) Expand certain regulatory exemptions from provisions of the act to include an individual acting solely as an agent for a foster child or ward.

(b) Require athlete agents, prior to engaging in or carrying on the business of an athlete agent, to file specified disclosures with the Secretary of State, ~~signed under penalty of perjury,~~ concerning the athlete agent and each individual acting as an athlete agent within a firm, company, or partnership, and make related changes, as specified.

(c) Require the payment of filing fees, as specified, to be paid into the State Treasury to the credit of the Business Fees Fund of the Secretary of State.

A violation of specified provisions of the Miller-Ayala Athlete Agents Act would subject an athlete agent to civil and criminal penalties. By expanding the scope of conduct subject to existing criminal penalties, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 18895.2 of the Business and
2 Professions Code is amended to read:

3 18895.2. The following definitions govern the
4 construction of this chapter:

5 (a) “Agent contract” means any contract or
6 agreement pursuant to which a person authorizes or
7 empowers an athlete agent to negotiate or solicit on
8 behalf of the person with one or more professional sports
9 teams or organizations for the employment of the person
10 by one or more professional sports teams or organizations,
11 or to negotiate or solicit on behalf of the person for the
12 employment of the person as a professional athlete.

13 (b) (1) “Athlete agent” means any person who,
14 directly or indirectly, recruits or solicits an athlete to
15 enter into any agent contract, endorsement contract,
16 financial services contract, or professional sports services
17 contract, or for compensation procures, offers, promises,
18 attempts, or negotiates to obtain employment for any
19 person with a professional sports team or organization or
20 as a professional athlete.



1 (2) “Athlete agent” does not include a person licensed
2 as an attorney, dealer in securities, financial planner,
3 insurance agent, real estate broker or sales agent, or tax
4 consultant, or other professional person, when the
5 professional person offers or provides the type of services
6 customarily provided by that profession, except and
7 solely to the extent that the professional person also
8 recruits or solicits an athlete to enter into any agent
9 contract, endorsement contract, or professional sports
10 services contract, or for compensation procures, offers,
11 promises, attempts, or negotiates to obtain employment
12 for any person with a professional sports team or
13 organization or as a professional athlete. “Athlete agent”
14 does not include any person acting solely on behalf of a
15 professional sports team or organization.

16 (3) Sections 18896.6, 18897.6, and 18897.63 do not apply
17 to an individual acting as an athlete agent solely for his or
18 her spouse, child, foster child, ward, or grandchild.

19 (c) “Employment as a professional athlete” includes
20 employment pursuant to an endorsement contract or a
21 professional sports services contract.

22 (d) “Endorsement contract” means any contract or
23 agreement pursuant to which a person is employed or
24 receives remuneration for any value or utility that the
25 person may have because of publicity, reputation, fame,
26 or following obtained because of athletic ability or
27 performance.

28 (e) “Financial services” means the making or
29 execution of an investment or other financial decision, or
30 counseling as to a financial decision.

31 (f) “Negotiate” includes any contact on behalf of any
32 athlete with a professional sports team or organization or
33 on behalf of any person with any other person who
34 employs or potentially may employ the person as a
35 professional athlete, regardless of whether the contact is
36 made in person, in writing, electronically, through
37 representatives or employees, or in any other manner.
38 “Negotiate” also includes being present during any
39 discussion of an endorsement contract or professional
40 sports services contract with representatives of the

1 professional sports team or organization or potential or
2 actual employer.

3 (g) “Person” means any individual, company,
4 corporation, association, partnership, limited liability
5 company, or their agents or employees.

6 (h) “Professional sports services contract” means any
7 contract or agreement pursuant to which a person is
8 employed or agrees to render services as a player on a
9 professional sports team or organization or as a
10 professional athlete.

11 (i) (1) “Student athlete” means any individual
12 admitted to or enrolled as a student, in an elementary or
13 secondary school, college, university, or other
14 educational institution if the student participates, or has
15 informed the institution of an intention to participate, as
16 an athlete in a sports program where the sports program
17 is engaged in competition with other educational
18 institutions.

19 (2) “Student athlete” does not include any person who
20 has entered into a valid agent contract, a valid
21 endorsement contract, or a valid professional sports
22 services’ contract. “Student athlete” does not include any
23 student of a college or university whose eligibility to
24 participate in an intercollegiate sport has terminated, as
25 determined by the governing body of the state or national
26 association for the promotion and regulation of
27 intercollegiate athletics of which the student’s college or
28 university is a member.

29 SEC. 2. Article 1.5 (commencing with Section 18896)
30 is added to Chapter 2.5 of Division 8 of the Business and
31 Professions Code, to read:

32

33 Article 1.5. Public Disclosure

34

35 18896. To assist enforcement of this chapter, each
36 athlete agent, prior to engaging in or carrying on the
37 business of athlete agent, shall file the following
38 information with the Secretary of State, in the form that
39 the Secretary of State shall prescribe, ~~signed under~~
40 ~~penalty of perjury~~, concerning the athlete agent and each



1 individual acting as an athlete agent within a firm,
2 company, or partnership:

3 (a) The name, residence address, social security
4 number, and driver's license number.

5 (b) The street and address number of all locations
6 where the business of the athlete agent is to be
7 conducted.

8 (c) The name and business address of a designated
9 agent in California for service of process, as required by
10 Section 18897.83.

11 (d) All businesses or occupations engaged in for the
12 two years immediately preceding the date of filing.

13 (e) Any convictions for any of the following:

14 (1) A felony.

15 (2) A misdemeanor involving a violation of this
16 chapter, or Chapter 1 (commencing with Section 1500)
17 of Part 6 of Division 2 of the Labor Code as repealed by
18 Chapter 857 of the Statutes of 1996, or the law of any other
19 state governing athlete agents.

20 (3) Fraud, theft, embezzlement, fraudulent
21 conversion, or misappropriation of property.

22 (f) (1) The name of the insurer providing the security
23 required by Section 18897.87, and the amount of that
24 insurance coverage, if the athlete agent provides some or
25 all of that security in the manner required by subdivision
26 (a) of Section 18897.87.

27 (2) The value and specific location of the security
28 required by Section 18897.87, if the athlete agent provides
29 some or all of that security in the ~~same manner as~~ *manner*
30 required by subdivision (b) of Section 18897.87.

31 (g) Any appearances before any disciplinary or
32 professional board, association, secretary, committee, or
33 other entity as a result of disciplinary charges or other
34 allegations of misconduct against the athlete agent or
35 individual, and the outcome of those proceedings.

36 (h) Whether or not any student athlete or any
37 educational institution has been sanctioned, suspended,
38 or declared ineligible to participate in one or more
39 interscholastic or intercollegiate athletic events in any

1 proceeding arising from, or related to, the actions of the
2 athlete agent.

3 (i) All past and present persons on behalf of whom the
4 athlete agent or individual has acted as an athlete agent.

5 (j) The names of any ~~player's~~ *players'* associations with
6 whom the athlete agent is registered.

7 (k) At least three references.

8 (l) Affidavits or certificate or completion of any and all
9 formal training or practical experience in any of the
10 following specific areas: contracts, contract negotiation,
11 complaint resolution, arbitration, or civil resolution of
12 contract disputes.

13 (m) The names and residence addresses ~~of~~ *of* all
14 persons financially interested in the operation of the
15 business of the athlete agent, whether as employees,
16 partners, investors, associates, or profit sharers, or in any
17 other manner.

18 (n) A schedule of fees to be charged and collected in
19 the conduct of the athlete agent business.

20 18896.2. (a) Within seven days of the time any
21 information in the filing required by Section 18896
22 changes, the athlete agent shall file revised information
23 in the form that the Secretary of State shall prescribe.

24 (b) No revision of a fee schedule filed pursuant to
25 subdivision (n) of Section 18896 shall be effective until
26 ~~seven days after~~ it is filed pursuant to this section.

27 18896.3. *The forms prescribed by the Secretary of State*
28 *pursuant to Sections 18896 and 18896.2 shall include the*
29 *following statement:*

30 *"Filing of false, misleading, or incomplete statements*
31 *on this form may subject you to criminal and civil*
32 *penalties under the Miller-Ayala Athlete Agents Act,*
33 *Chapter 2.5 (commencing with Section 18895) of*
34 *Division 8 of the Business and Professions Code."*

35 18896.4. Sections 18896 and 18896.2 do not require the
36 disclosure of information related solely and exclusively to
37 other businesses of the athlete agent.

38 18896.6. Upon making first contact, direct or indirect,
39 with a professional athlete, a student athlete, a student
40 athlete's spouse, parent, foster parent, guardian, sibling,

1 aunt, uncle, grandparent, child, or first cousin, any of the
2 ~~proceeding~~ *preceding* persons for whom a relationship
3 has been established by marriage, or any person residing
4 in the same place as a student athlete, *or a representative*
5 *of any of these persons*, an athlete agent, or his or her
6 employee or representative, shall provide that person
7 with a written notification stating: “This athlete agent has
8 current public-disclosure information on file with the
9 California Secretary of State as required by the
10 Miller-Ayala Athlete Agents Act, Chapter 2.5
11 (commencing with Section 18895) of Division 8 of the
12 Business and Professions Code, which also includes other
13 protections for athletes. Filing of the required
14 information does not imply approval by the California
15 Secretary of State of the competence of the athlete
16 agent.” The notification shall also include specific
17 instructions on how to obtain the public disclosure
18 information from the Secretary of State.

19 18896.8. (a) An athlete agent shall pay filing fees in
20 an amount established pursuant to subdivision (b) upon
21 making the filings required by Sections 18896 and 18896.2.

22 (b) The Secretary of State shall set applicable filing
23 fees in the amounts necessary to generate revenue
24 sufficient to cover the costs of administration of this
25 chapter.

26 (c) All fees collected by the Secretary of State under
27 this chapter shall be paid into the State Treasury and
28 credited to the Business Fees Fund of the Secretary of
29 State.

30 SEC. 3. Section 18897.1 is added to the Business and
31 Professions Code, to read:

32 18897.1. The following shall be printed on the first
33 page of every agent contract in boldface type at least two
34 points larger than any other type on the page: “This
35 athlete agent has current public disclosure information
36 on file with the California Secretary of State as required
37 by the Miller-Ayala Athlete Agents Act, Chapter 2.5
38 (commencing with Section 18895) of Division 8 of the
39 Business and Professions Code, which also includes other
40 protections for athletes. Filing of the required

1 information does not imply approval by the California
2 Secretary of State of the terms and conditions of this agent
3 contract or the competence of the athlete agent.”

4 SEC. 4. Section 18897.63 of the Business and
5 Professions Code is amended to read:

6 18897.63. (a) Except as otherwise provided in this
7 section, no athlete agent or athlete agent’s representative
8 or employee may make or continue any contact, whether
9 in person, in writing, electronically, or in any other
10 manner, with any student athlete, or any student athlete’s
11 spouse, parent, foster parent, guardian, grandparent,
12 child, sibling, aunt, uncle, or first cousin, or any of the
13 preceding persons for whom the relationship has been
14 established by marriage, or any person who resides in the
15 same place as the student athlete, or any representative
16 of any of these persons.

17 (b) An athlete agent or athlete agent’s representative
18 or employee may send a student athlete, or any of the
19 other persons described in subdivision (a), written
20 materials, provided that the athlete agent previously has
21 sent, or simultaneously sends, an identical copy of the
22 materials to the principal, president, or other chief
23 administrator of the elementary or secondary school,
24 college, university, or other educational institution to
25 which the student athlete has been admitted or in which
26 the student athlete is enrolled.

27 (c) If a student athlete, or any of the other persons
28 described in subdivision (a), initiates contact with an
29 athlete agent or athlete agent’s representative or
30 employee, the athlete agent, representative or employee
31 may continue the contact and make new contacts with
32 that person. No later than the first regular business day
33 after that person first initiates contact, the athlete agent
34 shall notify in writing the principal, president, or other
35 chief administrator of the elementary or secondary
36 school, college, university, or other educational
37 institution to which the student athlete has been
38 admitted or in which the student athlete is enrolled, of
39 that contact. The notification shall describe the nature of
40 the contact.

(d) Any written material ~~as~~ described in subdivision (b), and any notification required by subdivision (c), shall include the notification required by Section 18896.6.

(e) This section does not apply to any contact between an athlete agent or athlete agent's representative or employee and a student athlete or any of the other persons described in subdivision (a), if and solely to the extent that the contact is initiated by an elementary or secondary school, college, university, or other educational institution to which the student athlete has been admitted or in which the student athlete is enrolled.

SEC. 5. Section 18897.87 of the Business and Professions Code is amended to read:

18897.87. Every athlete agent shall provide security for claims against the athlete agent or the athlete agent's representatives or employees based upon acts, errors, or omissions arising out of the business of the athlete agent through either one or an aggregate of both of the following:

(a) A policy or policies of insurance against liability imposed on or against the agent by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars (\$100,000).

(b) In trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars (\$100,000).

SEC. 6. Section 18897.97 is added to the Business and Professions Code, to read:

18897.97. The Secretary of State may, in accordance with Chapter 3.5 (commencing with Section 11430) of Part 1 of Division 3 of Title 2 of the Government Code, adopt, amend, and repeal rules and regulations reasonably necessary for the purpose of administering this chapter and consistent with this chapter.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred

1 by a local agency or school district will be incurred
2 because this act creates a new crime or infraction,
3 eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section
5 17556 of the Government Code, or changes the definition
6 of a crime within the meaning of Section 6 of Article
7 XIII B of the California Constitution.

8 Notwithstanding Section 17580 of the Government
9 Code, unless otherwise specified, the provisions of this act
10 shall become operative on the same date that the act
11 takes effect pursuant to the California Constitution.

